IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R. RAMAN &
THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

MFA.No. 1351 of 2000()

OPMV.368/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ATTINGAL
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APPELLANTS:
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1. Krishnamma, W/o. Late Janardhan Chettiar, Geetha Mandiram, Seemanthapuram, Madavoor P.O., Pallickal.

2. Geetha (Minor), D/o. Late Janardhanan Chettiar, of do. do. Minor rep. by her mother the 1st appellant.

3. Girish (Minor), S/o. Late Janardhanan Chettiar of do. do. Minor rep. by his mother the 1st appellant.

4. Kochuparvathi Amma Mother of late Janardhanan Chettiar of do. do.

BY ADV. SRI.G.SASIDHARAN CHEMPAZHANTHIYIL
SRI.S.VISHNU

RESPONDENTS:
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1. The Managing Director, K.S.R.T.C., Thiruvananthapuram.

2. Jayachandran Nair, S/o. Kunjan Pillai, Krishnavilasom, Thengumcode,Kallara.

BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.
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M.F.A.No.1351 of 2000
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Dated this the 26th day of February, 2007.

JUDGMENT

Antony Dominic,J.

Claimants before the Motor Accidents Claims Tribunal are the appellants. It is seen that the husband of the first claimant, a Head load worker was returning home through Pallickal – Kilimanoor road, when a K.S.R.T.C. bus driven by the second respondent hit him and as a result of the accident he succumbed to the injuries. The evidence as discussed by the Tribunal would show that the tarred portion of the road was having a width of 3.75 metres and the place of occurrence is 2 metres to the west of the eastern tar end. The Tribunal awarded a total amount of Rs.2,17,000/-. However, the finding that there was negligence on the part of the deceased as well as the second respondent, the contribution was fixed at 50% each. On this basis, the Tribunal found that the first respondent is liable to pay Rs.1,08,500/- as compensation to the appellants.

2. On going through the award of the Tribunal, we find that while the deceased, an illiterate person, was riding in a bycycle through the public road lying north to south, the K.S.R.T.C. bus driven

by the second respondent hit him. The road being a straight road, it was because of the negligence of the driver that the accident occurred and had he been careful in driving, the accident could have been averted. The award also discusses that the driver was charge sheeted for an offence punishable under Sections 279 and 304(A) I.P.C. relating to a subsequent occurrence and thereafter he committed suicide. In the facts of the case and in the light of the evidence, the Tribunal was not justified in apportioning the liability of 50% each. In our view, it would be more appropriate to make the K.S.R.T.C liable for 75% of the award amount and the award will stand modified that the claimants are entitled to additional amount of Rs.54250/- in addition to Rs.1,08,500/- ordered by the Tribunal. This amount will carry interest at the rate of 6% per annum from the date of petition till date of payment.

The M.F.A. is partly allowed.

P.R.Raman,
Judge.

Antony Dominic,
Judge.

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